

REMARKS

The Office Action of March 23, 2005, has been carefully reviewed by the Applicants. Claim 5 has been amended. Claim 6, 29, and 30 have been cancelled. Claims 1-5 and 7-28 remain pending. Applicants request reconsideration of the application.

Claims 29 and 30 were originally withdrawn in response to a restriction requirement and have now been cancelled.

Claims 5 and 10-14 were rejected under 35 U.S.C. 103(a) as unpatentable over Topper (US 3,119,617) in view of Schindler (US 5,636,835). Applicants traverse the rejections.

The limitations of claim 6, which were not rejected, have been included in claim 5 and claim 6 has been cancelled. Therefore, Topper and Schindler do not render the current claims obvious. Any claims depending from a non-obvious claim are also non-obvious. MPEP § 2143.03.

With regards to claim 13, Topper does not teach the limitation that the center of mass of the ball coincides with the geometric center of the ball. Please note the following passages in column 2, lines 23-24 and 59-62:

"The weight **36** is sufficient to establish the center of gravity of the toy."

"... the weight **36** ensuring that the ball will strike the ground with the housing **25** in vertical alignment and with the aperture **12** in the envelope **11** uppermost."

These passages show that Topper's counterweight is intended to make one end of the ball heavier to ensure that the ball, when bounced, always lands on that side so the pump will work. In a ball where the center of mass and the geometric center coincide, the ball may land on any side randomly. Topper, in fact, teaches away from this limitation because he requires that the center of mass not coincide with the geometric center. Schindler does not correct this deficiency.

Applicants request withdrawal of the rejections based on Topper and Schindler.

Claims 1-30 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-18 of copending Application 10/742,256. Applicants traverse the rejections. Applicants submit a Terminal Disclaimer and request withdrawal of the rejections.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (1-5 and 7-28) are now in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby authorized to call Richard M. Klein, at telephone number 216-861-5582, Cleveland, OH.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

June 6, 2005
Date



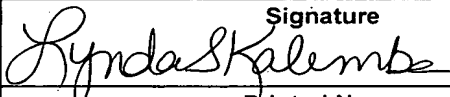
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